



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/151163

PRELIMINARY RECITALS

Pursuant to a petition filed August 01, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on August 22, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's PA request for speech/language (SLP) therapy services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Theresa Walske

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.

2. Petitioner's primary diagnosis is cerebral palsy. He has delayed fine motor skills, delayed self-care skills, decreased attention span, poor direction following, left side neglect, delayed sensory processing.
3. On May 22, 2013, the Petitioner's provider, HealthReach Rehabilitation, submitted a PA request for SLP services one time/week for 12 weeks. The goals in the Plan of Care dated May 22, 2013 are:
 1. Follow 2 step unrelated directions with 80% accuracy.
 2. Demonstrate an understanding of location words with 80% accuracy.
 3. Demonstrate an understanding of words and their meanings (categories, associations, same/different) with 80% accuracy.
 4. Use 4+ word utterances to express self 80% of the opportunities.
 5. Respond correctly to simple "wh" questions (what, who, where) with 80% accuracy.
 6. Tolerate intra-oral stimulation to improve range of movement, coordination, and strength of the tongue, lips, and jaw for speech and feeding, 3 – 5 minutes/session.
 7. Chew 20 consecutive times on grabber, across 3 consecutive sessions.
 8. Formal assessment of articulation skills.
4. The Petitioner attends school in the [REDACTED] and has an IEP for SLP therapy during the school year.
5. On July 9, 2013, the agency denied the Petitioner's request for SLP services.
6. On August 1, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Adm. Code § DHS 107.18(2). When a PA is necessary, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines Manual, p. 111.001.02, no. 3.

When determining whether a service is necessary, the agency must review, among other things, whether the service is medically necessary and an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1 and 7. "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided; . . .
 3. Is appropriate with regard to generally accepted standards of medical practice;
 - ...

8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient;

...

Wis. Admin. Code, § DHS 101.03(96m).

The Wisconsin Administrative Code has directions for when a PA is not to be approved for continuing services:

(e) Extension of therapy services. Extension of therapy services shall not be approved in any of the following circumstances:

1. The recipient has shown no progress toward meeting or maintaining established and measurable treatment goals over a 6-month period, or the recipient has shown no ability within 6 months to carry over abilities gained from treatment in a facility to the recipient's home;

...

6. Other therapies are providing sufficient services to meet the recipient's functioning needs;

Wisconsin Admin. Code § DHS 107.18(3)(e).

The agency interprets the code provisions to mean that a person must continue to improve for therapy to continue. In addition, at some point, the therapy program should be carried over to the home, without the need for professional intervention. Finally the MA program will not pay for therapy if the person already receives therapy from a different provider.

In this case, the agency asserts that the SLP services do not meet the criteria because the provider did not demonstrate the services were “medically necessary.” Specifically, it contends that there was no documentation of Petitioner’s progress with speech and language therapy submitted with the PA. It noted that the provider administered the PLS-4 test to the Petitioner but no previous test results or evaluations were submitted to demonstrate that the Petitioner had made progress. The agency also noted that the plans of care submitted for the Petitioner’s previous treatment from June, 2012 – September, 2012 did not document results or progress made by the Petitioner during that time. Further, the agency notes that there was no documentation from the Petitioner’s school to demonstrate progress that may have been made from September, 2012 – May 2013.

The agency also asserts that there was no documentation submitted to demonstrate that Petitioner required SLP services in addition to the services he receives at school during the school year. The plans of care for the treatment during the period of June, 2012 – September, 2012 did not document how services impacted his skills.

The agency further contends that the evaluation conducted by the provider was not medically necessary because the school district conducted an evaluation 29 days prior to the evaluation by the provider.

At the hearing, the Petitioner’s mother testified to the Petitioner’s speech and language deficits. She stated that the muscles in his throat are weak. He has a large vocabulary but it is difficult to understand him. He sometimes relies on sign and body language to communicate.

Though it is clear that the Petitioner has speech and language deficits that might benefit from SLP services over the summer months, it is the Petitioner and provider who have the burden to demonstrate that the services are medically necessary as that term is defined in the MA regulations. In this case, after reviewing the information submitted by the provider, I must agree with the agency that the provider has not met its burden of meeting the criteria. There was insufficient information submitted to allow me to conclude that the services are medically necessary. As the agency correctly pointed out, there is no documentation of whether or how services have improved the Petitioner's skills.

With regard to the evaluation, I note that the agency denied coverage of the evaluation on the grounds that the school had just performed a similar evaluation 29 days prior. The IEP actually notes that the school was unable to complete most of the test and unable to score the test because the Petitioner's behavior prevented him from doing the required tasks. Though I am finding the provider did not provide sufficient information to determine the requested services were medically necessary, I am concluding that the evaluation should be covered. Because there had been no recent evaluation or testing of his skills, I conclude it was appropriate to conduct an evaluation to determine if SLP services over the summer months might be necessary.

Based on the evidence, I conclude the agency properly denied SLP services to the Petitioner. I further conclude that the evaluation was medically necessary.

CONCLUSIONS OF LAW

The agency properly denied SLP services to the Petitioner. The evaluation conducted by the Petitioner was medically necessary and should be approved by the agency for reimbursement.

THEREFORE, it is

ORDERED

That with regard to SLP services requested, the petition is hereby dismissed.

That with regard to the SLP evaluation, the provider may submit a claim for payment of the evaluation rendered pursuant to PA request # [REDACTED], together with a copy of this Decision, to ForwardHealth and ForwardHealth is directed to pay the claim.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of October, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 18, 2013.

Division of Health Care Access And Accountability